



# Adult children as tax free dependants

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**W**ith an increasing number of elderly parents living with their adult children, is it possible that an adult child of a deceased parent could, on the death of the parent, receive their parent's superannuation tax free?

For an adult child to receive their deceased parent's superannuation benefit, the adult child must either be a 'financial dependent' of the parent or have an interdependency relationship with their parent at the time of death of the parent.

This paper considers whether an adult child can have an interdependency relationship with their parent. It is presumed that the adult child is legally and financially independent of the parent.

## Interdependency relationship – a poor choice of a name

The name 'interdependency relationship' is simply the term used in the statutory definition.

Unfortunately, the term suggests that each individual in the relationship is in some way dependent on the other with the consequence that the understanding of the elements of the definition are distorted by viewing each requirement through the lens of mutual dependency which is both financial and non-financial in scope.

## Elements of the relationship

For the relationship to exist between two individuals, four elements must be satisfied:

- they must have a close personal relationship
- they must live together
- one or each of them provides the other with financial support
- one or each of them provides the other with domestic support and personal care.

### Close personal relationship

This element does not require a sexual or romantic relationship to exist between the two individuals. A relationship can be close and personal without being sexual or romantic. There is no requirement that the relationship be marriage-like although a marriage-like relationship will qualify as a close personal relationship.

### Living together

This element only requires that the two individuals share the same residence. This element imports no romantic or sexual requirement.

### Financial support

This element does not require financial dependency of one on the other.

Financial support is less onerous threshold than financial dependency. Further there is no requirement that each individual must provide

the other with financial support. It is sufficient that only one individual provides financial support to the other.

### Domestic support and personal care

This element does not require that each individual must provide the other with domestic support or personal care. It is sufficient that one individual provides the other with domestic support and personal care. It would also be sufficient if one individual provides the other domestic support while the other provides the first with personal care.

### How to establish each element?

In building a case that an interdependency relationship exists between two individuals, each of the four elements must be satisfied. This general statement is subject to exceptions.

As to the 'close personal relationship' – this will exist if there is a demonstrated and ongoing commitment to the emotional support and well-being between two individuals. A shared life will satisfy this requirement.

The absence of a shared life does not negate the existence of a close personal relationship. If there is no shared life—which would typically be the case between a parent and an adult child, the element could be established by details of the daily or weekly interactions between the parent and the adult child – such as telephone calls, outings, the subject of the conversations between the two. In the case of a parent and adult child, interactions would have to be above the normal interactions – both in frequency and in the content of the interactions.

As to 'living together' – this element will be satisfied if the individuals share the same accommodation, and the arrangement is not short term only or for a particular purpose— such as moving in while a house is being built. If the living arrangement is of indefinite duration and there are elements of a shared life – such as eating together, sharing cleaning and cooking and entertaining together – the element will be satisfied. The element will not be satisfied if the arrangement is one of pure economic convenience.

As to financial support – this element will be satisfied if either, or both of them, contribute on a regular basis to the financial support of the other. For example, each contributes to the running costs of the residence, for instance electricity, council rates, water rates, broadband, repairs, maintenance, food and so on. This element could be satisfied even if both individuals are financially independent. The critical issue is the recognition of joint expenses and the sharing of the joint expenses on an indefinite basis.

As to 'domestic support and personal care' – this element will be satisfied if either or both of them provide support as such shopping, house cleaning and laundry and ironing (domestic support) or attend to their mobility needs, medical appointments, dressing and emotional support (personal care).

As with any case, specific instances and documentary evidence are vital. Under each element, details should

be provided of the instances relevant to the element. For example, if there are medical appointments – dates and nature of the appointment, who arranged the appointment and who provided the transport? If meals are taken together – how often? If expenses are shared – evidence of payment. Mere assertions in the absence of specific details will not establish the existence of the relationship.

### Who decides whether there is a special relationship?

In the first instance it will be the trustee of the superannuation fund paying the benefit. Where the superannuation fund is a self-managed superannuation fund (SMSF), the trustee should provide quite detailed documentary justification of the existence of the relationship. The trustee should take the approach as if the trustee were submitting a request for a private binding ruling as to whether the adult child and the deceased member were in an interdependency relationship.

The decision of the trustee of an SMSF, however, does not bind the Commissioner of Taxation. The Commissioner could form his own different view as to whether there was an interdependency relationship. For this reason, the trustee and/or the beneficiary may first seek a private binding ruling from the Commissioner.

#### Private binding ruling

Private binding rulings are a mechanism in the Australian tax administration system where a particular entity may seek the view of the Australian Taxation Office (ATO) on the treatment of a transaction without going through the formal objection or dispute process.

A private binding ruling (PBR) may be applied for before a transaction has been entered into or after it has been completed. There is no cost to apply to the ATO for a PBR.

The advantage of getting a PBR is the certainty that this provides, as, where the ruling is favourable to the entity, if the ATO later decides that the treatment was incorrect, the entity can rely on this ruling to prevent the ATO from applying their new view. In other words, the ATO is required to stick to its original position, so the entity can rely on that with certainty.

The PBR binds the ATO in this way only if the circumstances of the transaction as implemented are the same as disclosed in the application. Any difference between the two, including omissions, may result in the ATO not having to stand behind its original view. So it is of vital importance that the transaction is accurately described in the application for the PBR.

Alternatively, the trustee could pay the death benefit to the beneficiary on the basis that there was no interdependency relationship and allow the beneficiary to lodge their personal tax return on that basis with the beneficiary then lodging an objection to the return on the basis that the death benefit is in fact not taxable on the basis that there was an interdependency relationship.



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Michael is a superannuation and financial services lawyer with over 25 years legal and superannuation experience gained in both private practice and corporate counsel positions. His work in the superannuation field in various capacities has given him an extensive understanding of the specialised field of superannuation and the superannuation industry. Michael is Special Counsel – Superannuation with Townsends Business & Corporate Lawyers, Legal Advisers to SUPERCentral. He has a Bachelor of Arts and LLB degrees as well as a Graduate Diploma of Securities and Applied Finance.

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*The absence of a shared life does not negate the existence of a close personal relationship.*

There are many private binding rulings which have been published (on an anonymous basis) that have held that an adult child and their parent were in fact in an interdependency relationship. The common feature of the binding rulings which have been favourable to the beneficiary is the detail which has been provided as to each element of the interdependency relationship. **FS**

Note: This information was prepared as at March 2024 and has not been updated in light of subsequent developments.